

February 13, 2013

### Coal Ash Placement

#### AES Agremax Management

- PREPA power purchase agreement – coal ash
- PREQB BUD- Agremax OK (coal ash 180 days)
- AES well field
- “Road to Nowhere”

#### **Ex. 5 - Deliberative Process**

#### LEAF Test

- TCLP test not applicable
- LEAF test more representative
- LEAF test indicates Agremax metals are “typical” coal ash range

#### Environmental and Health Threats

- EPA has not conducted risk assessment for beneficial use of coal ash
- EPA has documented coal ash damage cases

#### **Ex. 5 - Deliberative Process**

#### Proposed EPA Coal ash rule

- Options – Subtitle D or C
- Safe beneficial use – no “SHAM” reuse
- Region 2 position consistent with proposed rule

#### Citizen Actions

- 90 day notice to sue given by Public Justice NGO pursuant to RCRA 7002b on 9/26/12
- Guayama Municipality passed local ban on placement of Agremax in 2012
- Dominican Republic lawsuit

#### Citizen Communication with Senior EPA Officials

- Ruth Santiago Met with Lisa Garcia in Washington DC in September 2010 at the time of Ruth’s testimony on the proposed rule.
- Ruth spoke with Regional Administrator Judith Enck a week later, in a call set up by Earthjustice.
- Ruth later (date unknown) met with Lisa Garcia in Puerto Rico and showed her the Agremax sites. Lisa did not make any commitment and had no subsequent contact with Ruth.

#### **Ex. 5 - Deliberative Process**

- Settlement negotiations began 12/12
- AES hired top law firm – Sidley Austin, and top consultant – former EPA OSW Director Sylvia Lowrance
- Settlement offer received

## **Ex. 5 - Deliberative Process**